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| APPLICATION NO.                 | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------|-------------|----------------------|---------------------|------------------|
| 10/627,591                      | 07/25/2003  | Andrew Clark         | 53229-US-CNT[2]     | 2973             |
| 1095 7590 06/03/2010            |             |                      |                     |                  |
| NOVARTIS                        |             |                      |                     |                  |
| CORPORATE INTELLECTUAL PROPERTY |             |                      |                     |                  |
| ONE HEALTH PLAZA 104/3          |             |                      |                     |                  |
| EAST HANOVER, NJ 07936-1080     |             |                      |                     |                  |
| EXAMINER                        |             |                      |                     |                  |
| DOUGLAS, STEVEN O               |             |                      |                     |                  |
| ART UNIT                        |             | PAPER NUMBER         |                     |                  |
| 3771                            |             |                      |                     |                  |
| MAIL DATE                       |             | DELIVERY MODE        |                     |                  |
| 06/03/2010                      |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ANDREW CLARK, and  
GEORGE H. FOULDS

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Appeal 2010-002451  
Application 10/627,591  
Technology Center 3700

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Before DALE M. SHAW, *Division 2 Support Administrator*

ORDER REMANDING APPEAL TO EXAMINER

This is a Director ordered remand under 37 C.F.R. § 41.35(c) for the matter identified below. Accordingly, the application is herewith being remanded to the Examiner.

This application was electronically received at the Board of Patent Appeals and Interferences on December 17, 2009. A Docketing Notice was mailed and Appeal 2010-002451 was assigned on January 21, 2010.

Claim 33 of the instant application contains functional language that may be indefinite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. *See Ex Parte Rodriquez*, 2009 WL 3756279 (BPAI 2009) and *Aristocrat Techs. Austl. Pty.*

*Ltd. v. It'l. Game Tech.*, 521 F.3d 1328 (Fed Cir. 2008). On September 2, 2008, the Deputy Commissioner for Patent Examination Policy, John J. Love, issued a memorandum entitled “Rejections under 35 U.S.C. 112, second paragraph, when examining means (or step) plus function claim limitations under 35 U.S.C. 112, sixth paragraph”, located at: [http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section\\_112\\_6th\\_09\\_02\\_2008.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/section_112_6th_09_02_2008.pdf). Thus, there is a question as to whether claim 33 and the claims which depend upon this claim, meet the requirements of being definite under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

Accordingly, it is

ORDERED that the application is remanded to the Examiner to determine if claim 33, meet the requirements of 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

mev

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